

STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF)	
)	
FLYING SOLO, INC.)	
d/b/a SIDEWINDERS BAR & GRILL)	PERMIT NO. RR49-06124
1847 SOUTH STATE STREET)	
INDIANAPOLIS, INDIANA 46203)	
)	
Permittee.)	

PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Permittee, Flying Solo, Inc., d/b/a Sidewinders Bar & Grill, 1847 South State Street, Indianapolis, Indiana 46203 (“Permittee”) is the holder of a type 210 Alcohol and Tobacco Commission (“ATC” or “Commission”) permit, #RR49-06124. On or about November 15, 2004, Permittee filed its request for renewal and that application was assigned to the Marion County Local Board (“Local Board”) for hearing. The Local Board heard the renewal request on April 18, 2005, and on that same day, voted 3 – 1 to continue the proceedings for ninety (90) days. On or about June 6, 2005, the Local Board voted 4 – 0 to recommend denial of the application. The ATC adopted the recommendation of the Local Board on June 22, 2005, and denied the renewal application.

Permittee filed a timely notice of appeal and the matter was assigned to the Commission Hearing Judge, U-Jung Choe (“Hearing Judge”). The Hearing Judge assigned the matter for hearing on March 6, 2006, and at that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. Permittee was represented by attorney Mark C. Webb. There were no remonstrators. The Hearing Judge took judicial and

administrative notice of the entire contents of the file in this matter and now submits her Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

A. Evidence Presented Before the Local Board

1. The following individuals testified before the Local Board in support of the Permittee:

- a. Leigia Maldonado;
- b. Thomas A. Griffin;
- c. Tonya Alvarez; and
- d. Patty Griffin.

2. The following exhibits were offered and admitted into evidence before the Local Board on behalf of the Permittee in this cause:

- a. Letters of support from patrons, employees, neighbors and associates of the permit premises in support of renewal of the permit in this matter (approximately 90 letters);
- b. Additional letters of support on behalf of Permittee (approximately 11 letters);
- c. Floor plans of the permit premises;
- d. Record regarding expenditures on security from July, 2004 through March, 2005;
- e. FSSNA Certificate of appreciation for participation in the 2001 Backpack Project and receipt for monies donated for the 2005 campaign; and
- f. Warning sign in English and Spanish stating that the permit premises will not “allow weapons, fighting or illegal drugs on the premises, and that violators will be

arrested; as well as a statement verifying the age of a prospective patron; and a policy regarding underaged members of bands performing in the permit premises.

B. Evidence Presented Before the Commission

1. The following witnesses testified before the Commission on behalf of the Permittee in this cause:

- a. Ann Laurens;
- b. Kaisa Longoria;
- c. Tonya Alvarez; and
- d. Thomas A. Griffin.

2. The following exhibits were introduced before the Commission on behalf of the Permittee in the appeal hearing in this cause:

- a. Letter from Ann Laurens, President, Fountain Square South Neighborhood Association;
- b. List of signatures, names and addresses of neighbors of the permit premises indicating that they have no problems with the permit in this matter being renewed;
- c. Letters from patrons, friends and family members of the permit premises stating their support for the renewal application in this matter (approximately 90 letters).¹

II. FINDINGS OF FACT

1. Permittee, Flying Solo, Inc., d/b/a Sidewinders Bar & Grill, 1847 South State Street, Indianapolis, Indiana, is the holder of a Type 210 (beer, wine and liquor (restaurant) located in an incorporated area) ATC permit. (ATC File).

¹ This exhibit is equal to the combined Exhibits 1 and 2 introduced before the LB.

2. Said permit was first issued on October 20, 1998, and has been annually renewed since that time. (ATC Hearing; ATC File).
3. Flying Solo, Inc., is owned 100% by Thomas A. Griffin. (ATC Hearing).
4. Mr. Griffin purchased the permit premises in 1998 for \$107,000, including the permit. (ATC Hearing; Testimony of Thomas A. Griffin).
5. Permittee still owes approximately Sixty Three Thousand Dollars (\$63,000) on the purchase price of the premises. (ATC Hearing).
6. The permit premises is located in approximately the center of a neighborhood known as Fountain Square South Neighborhood Association, the boundaries of which are Pleasant Run Parkway, South Drive to the north; Raymond Street to the south; Keystone Avenue to the east; and Shelby Street to the west. (Local Board Hearing; ATC Hearing).
7. The permit premises is supported in its request for renewal of the permit by the Fountain Square South Neighborhood Association. (ATC Hearing).
8. Permittee established that many of its neighbors and patrons, including those who live in close proximity to the premises strongly favor renewal of the permit in this cause. (Local Board Hearing; ATC Hearing).
9. Permittee had no remonstrators of record opposing the renewal of its permit. (Local Board Hearing; ATC Hearing).
10. Permittee made improvements to the premises, including, but not limited to (i) improvements in the bar itself; (ii) changes to the floor plan; and (iii) upgrades in the kitchen and restrooms. (Local Board Hearing).
11. Permittee sold at least \$200,000 in food for the calendar years 2004 and 2005. (ATC Hearing).

12. Permittee received a violation on November 20, 2004 for having minors inside the permit premises. (ATC Records).

13. Permittee resolved said violation. (ATC Records; ATC Hearing).

14. On April 18, 2005, following the renewal hearing, including a review of the November 20, 2004 violation, the Local Board deferred the matter until August 1, 2005, thus placing the Permittee on probation until that time. (Local Board Hearing).

15. On May 1, 2005, Permittee received violations for (i) having minors inside the permit premises; (ii) allowing an alcoholic beverage to be carried onto the permit premises; and (iii) patrons being found with illegal narcotics in their possession. (ATC Records).

16. On or about June 6, 2005, Permittee was called before the Local Board on the basis of the May 1, 2005 violation. (ATC Records).

17. The Local Board revoked the probationary period and recommended denying renewal of the permit. (Local Board Hearing).

18. Permittee's May 1, 2005 violation was resolved by the ATC in January, 2006, with Permittee paying a fine and being placed on one year deferral. (ATC Records).

19. Since November 20, 2004, Permittee has increased security at the permit premises. (Local Board Hearing; ATC Hearing).

20. Permittee is current on its employee server training programs. (ATC Hearing).

21. Permittee has had additional visits by law enforcement since May 1, 2005, and has not received any violations since that date. (ATC Hearing).

22. Any finding of fact may be considered a conclusion of law if the context so warrants.

III. CONCLUSIONS OF LAW

1. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

2. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission including a public hearing, and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

3. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

4. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. Ct. App. 2002).

5. Permittee has taken steps to ameliorate the problems that led to issues of renewal before the Local Board. Ind. Code § 7.1-2-6-1(c); 905 IAC 1-27-2.

6. The ATC may grant or deny an application accordingly as it deems the public interest will be served best. Ind. Code § 7.1-3-19-10.

7. Where Permittee has (i) had no violations issued to it in a period of more than one (1) year; (ii) shown the ATC that it is making serious efforts to improve its business

practices and to conform them to the rules and regulations of the Commission; and (iii) made a positive contribution to its surrounding neighborhood and community, retention of the permit is in the best public interest. Ind. Code § 7.1-3-19-10.

8. Any conclusion of law may be considered a finding of fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the recommendation of the Local Board in the matter of Flying Solo, Inc., d/b/a Sidewinders Bar & Grill, 1847 South State Street, Indianapolis, Indiana 46203, permit number RR49-06124, was arbitrary and capricious, not based on substantial evidence and contrary to law and cannot be sustained. The appeal of Permittee is hereby granted and the recommendation of the Local Board in this matter is reversed.

DATED: _____

U-Jung Choe
Hearing Judge